

An amendment to a supplemental unemployment benefit plan providing for the distribution to employees of funds representing contributions in excess of maximum funding adversely affects the trust's exempt status under section 501(c)(17) of the Code.

Advice has been requested whether the status of a trust exempt from Federal income tax under section 501(c)(17) of the Internal Revenue Code of 1954 is adversely affected by the amendment to the supplemental unemployment benefit plan described below.

The trust was created to administer a supplemental unemployment benefit plan in accordance with the terms of a collective bargaining agreement entered into between a corporation and a union. The trust is funded by contributions by the corporation. Under the terms of the plan the corporation is not obligated to make contributions to the trust with respect to any pay period for which the market value of the assets in the trust is equal to a specific amount times the number of employees covered by the plan.

The plan was amended to provide that if the company were not required to make full payment to the fund based upon the hourly rate formula because the fund had reached the maximum amount required, any excess amount otherwise required to be paid by the formula would then be available for other distributions to employees by the corporation on a pro-rata basis.

Section 501(c)(17) of the Code provides for the exemption from Federal income tax of a trust or trusts, forming part of a plan providing for the payment of supplemental unemployment compensation benefits.

Section 1.501(c)(17)-1(a)(4) of the Income Tax Regulations states that the trust must be a part of a plan which provides that the corpus and income of the trust cannot (before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits. Thus, if the plan provides for the payment of any benefits other than supplemental unemployment compensation benefits, the trust will not be entitled to exemption as an organization described in section 501(c)(17).

Because the amendment to the supplemental unemployment benefit plan provides that funds representing contributions in excess of maximum funding will be made available to employees such distributions would not constitute supplemental unemployment compensation benefits. It follows that the amendment providing for the distribution of such funds under the plan to the employees adversely affects the trust's tax exempt status under section 501(c)(17) of the Code.